

its business continuity-disaster recovery capabilities. Both types of testing should be conducted by qualified, independent professionals. Such qualified independent professionals may be independent contractors or employees of the swap data repository, but should not be persons responsible for development or operation of the systems or capabilities being tested. Pursuant to §§ 1.31, 49.12 and 45.2 of the Commission's Regulations, the swap data repository shall keep records of all such tests, and make all test results available to the Commission upon request.

(k) To the extent practicable, a registered swap data repository should:

(1) Coordinate its business continuity-disaster recovery plan with those of swap execution facilities, designated contract markets, derivatives clearing organizations, swap dealers, and major swap participants who report swap data to the swap data repository, and with those regulators identified in Section 21(c)(7) of the Act, in a manner adequate to enable effective resumption of the registered swap data repository's fulfillment of its duties and obligations following a disruption causing activation of the swap data repository's business continuity and disaster recovery plan;

(2) Participate in periodic, synchronized testing of its business continuity—disaster recovery plan and the business continuity—disaster recovery plans of swap execution facilities, designated contract markets, derivatives clearing organizations, swap dealers, and major swap participants who report swap data to the registered swap data repository, and the business continuity—disaster recovery plans required by the regulators identified in Section 21(c)(7) of the Act; and

(3) Ensure that its business continuity—disaster recovery plan takes into account the business continuity—disaster recovery plans of its telecommunications, power, water, and other essential service providers.

§ 49.25 Financial resources.

(a) *General rule.* (1) A registered swap data repository shall maintain sufficient financial resources to perform its statutory duties set forth in § 49.9 and the core principles set forth in § 49.19.

(2) An entity that operates as both a swap data repository and a derivatives clearing organization shall also comply with the financial resource requirements applicable to derivatives clearing organizations under § 39.11 of this chapter.

(3) Financial resources shall be considered sufficient if their value is at least equal to a total amount that would enable the swap data repository, or applicant for registration, to cover its operating costs for a period of at least one year, calculated on a rolling basis.

(4) The financial resources described in this paragraph (a) must be independent and separately dedicated to ensure that assets and capital are not used for multiple purposes.

(b) *Types of financial resources.* Financial resources available to satisfy the requirements of paragraph (a) of this section may include:

(1) The swap data repository's own capital; and

(2) Any other financial resource deemed acceptable by the Commission.

(c) *Computation of financial resource requirement.* A registered swap data repository shall, on a quarterly basis, based upon its fiscal year, make a reasonable calculation of its projected operating costs over a 12-month period in order to determine the amount needed to meet the requirements of paragraph (a) of this section. The swap data repository shall have reasonable discretion in determining the methodology used to compute such projected operating costs. The Commission may review the methodology and require changes as appropriate.

(d) *Valuation of financial resources.* At appropriate intervals, but not less than quarterly, a registered swap data repository shall compute the current market value of each financial resource used to meet its obligations under paragraph (a) of this section. Reductions in value to reflect market and credit risk (haircuts) shall be applied as appropriate.

(e) *Liquidity of financial resources.* The financial resources allocated by the registered swap data repository to meet the requirements of paragraph (a) shall include unencumbered, liquid financial assets (*i.e.*, cash and/or highly

liquid securities) equal to at least six months' operating costs. If any portion of such financial resources is not sufficiently liquid, the swap data repository may take into account a committed line of credit or similar facility for the purpose of meeting this requirement.

(f) *Reporting requirements.* (1) Each fiscal quarter, or at any time upon Commission request, a registered swap data repository shall report to the Commission the amount of financial resources necessary to meet the requirements of paragraph (a), the value of each financial resource available, computed in accordance with the requirements of paragraph (d); and provide the Commission with a financial statement, including the balance sheet, income statement, and statement of cash flows of the swap data repository or of its parent company. Financial statements shall be prepared in conformity with generally accepted accounting principles (GAAP) applied on a basis consistent with that of the preceding financial statement.

(2) The calculations required by this paragraph shall be made as of the last business day of the swap data repository's fiscal quarter.

(3) The report shall be filed not later than 17 business days after the end of the swap data repository's fiscal quarter, or at such later time as the Commission may permit, in its discretion, upon request by the swap data repository.

§ 49.26 Disclosure requirements of swap data repositories.

Before accepting any swap data from a reporting entity or upon a reporting entity's request, a registered swap data repository shall furnish to the reporting entity a disclosure document that contains the following written information, which shall reasonably enable the reporting entity to identify and evaluate accurately the risks and costs associated with using the services of the swap data repository:

(a) The registered swap data repository's criteria for providing others with access to services offered and swap data maintained by the swap data repository;

(b) The registered swap data repository's criteria for those seeking to con-

nect to or link with the swap data repository;

(c) A description of the registered swap data repository's policies and procedures regarding its safeguarding of swap data and operational reliability to protect the confidentiality and security of such data, as described in § 49.24;

(d) The registered swap data repository's policies and procedures reasonably designed to protect the privacy of any and all swap data that the swap data repository receives from a reporting entity, as described in § 49.16;

(e) The registered swap data repository's policies and procedures regarding its non-commercial and/or commercial use of the swap data that it receives from a market participant, any registered entity, or any other person;

(f) The registered swap data repository's dispute resolution procedures;

(g) A description of all the registered swap data repository's services, including any ancillary services;

(h) The registered swap data repository's updated schedule of any fees, rates, dues, unbundled prices, or other charges for all of its services, including any ancillary services; any discounts or rebates offered; and the criteria to benefit from such discounts or rebates; and

(i) A description of the registered swap data repository's governance arrangements.

§ 49.27 Access and fees.

(a) *Fair, open and equal access.* (1) A registered swap data repository, consistent with Section 21 of the Act, shall provide its services to market participants, including but not limited to designated contract markets, swap execution facilities, derivatives clearing organizations, swap dealers, major swap participants and any other counterparties, on a fair, open and equal basis. For this purpose, a swap data repository shall not provide access to its services on a discriminatory basis but is required to provide its services to all market participants for swaps it accepts in an asset class.

(2) Consistent with the principles of open access set forth in paragraph (a)(1) of this Regulation, a registered swap data repository shall not tie or